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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 69**

**[EPA-R09-OAR-2013-0697; FRL-9909-18-Region 9]**

**Approval and Promulgation of Implementation Plans; Commonwealth  
of the Northern Mariana Islands; Prevention of Significant  
Deterioration; Special Exemptions from Requirements of the Clean  
Air Act**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Under the Clean Air Act, the Environmental Protection Agency (EPA) is taking final action to disapprove the state implementation plan (SIP) for the Commonwealth of the Northern Mariana Islands (CNMI) with respect to prevention of significant deterioration (PSD), and to incorporate by reference the Federal PSD regulations into the applicable CNMI plan. EPA is also taking final action to grant a petition by CNMI for an exemption of the applicable PSD major source baseline date, and to establish an alternate date, January 13, 1997, as the major source baseline date and trigger date in CNMI. EPA is also making certain corrections to errors that were made in previous rulemakings related to the CNMI SIP. This action establishes the Federal PSD regulations as a basic element of the applicable

CNMI plan and, through the exemption, establishes January 13, 1997 as the major source baseline date (and trigger date) under the PSD program in CNMI for sulfur dioxide, PM<sub>10</sub> and nitrogen dioxide.

**DATES:** *Effective Date:* This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-2013-0697 for this action. The index to the docket is available electronically at <https://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** La Weeda Ward, (213) 244-1812 or [ward.laweeda@epa.gov](mailto:ward.laweeda@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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**I. Proposed Action**

On November 25, 2013 (78 FR 70248), under section 110(k) of the Clean Air Act (CAA or "Act"), EPA proposed to disapprove the state implementation plan (SIP) for the Commonwealth of the Northern Mariana Islands (CNMI) with respect to prevention of significant deterioration (PSD), and to incorporate by reference the Federal PSD regulations into the applicable CNMI plan.<sup>1</sup> EPA also proposed to grant, under section 325(a)(1) of the Act, a petition by CNMI for an exemption of the applicable PSD major source baseline date under Federal PSD regulations, and to establish an alternate date, January 13, 1997, as the major source baseline date and trigger date for certain pollutants in CNMI. Lastly, under section 110(k)(6) of the Act, EPA proposed to make certain corrections to errors that were made in previous

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<sup>1</sup> CNMI is an insular territory of the United States. CNMI consists of 15 islands of volcanic origin which are located approximately 145° to 146° east and from 14° to 20° north of the equator. The islands extend in a general north-south direction for approximately 420 nautical miles from the Island of Farallon de Pajaros in the north to the island of Rota in the south. CNMI lies in the western part of the Pacific Ocean and is located approximately 1,250 miles south of Tokyo, 1,440 miles east of Manila, and 110 miles north of Guam. Based on Bureau of Census 2010 population counts, the total population of CNMI is approximately 54,000 with the majority of the population residing on Saipan.

rulemakings involving the CNMI SIP.

As explained in our November 25, 2013 proposed rule, the action would establish the Federal PSD regulations as a basic element of the applicable CNMI plan and, through the exemption, would establish January 13, 1997 as the major source baseline date (and trigger date) under the PSD program in CNMI for sulfur dioxide, PM<sub>10</sub> and nitrogen dioxide.

Our November 25, 2013 proposed rule provides detailed background information related to PSD requirements under part C of title I of the CAA (and EPA's PSD SIP requirements in 40 CFR 51.166) and petitions by governors of certain territories under CAA section 325(a) for exemptions from certain CAA requirements; the rationale for our conclusion that the CNMI SIP does not meet the requirements for PSD under part C of title I of the CAA and 40 CFR 51.166; the rationale for granting CNMI's petition for an alternate major source baseline date and the establishment of January 13, 1997 as the PSD major source baseline date and trigger date (with respect to sulfur dioxide, PM<sub>10</sub>, and nitrogen dioxide); and a description of the specific corrections to previous SIP actions that are needed to better identify and clarify the contents of the CNMI SIP as set forth in 40 CFR part 52. The reader is directed to the proposed rule for the details, which are not repeated here.

## **II. Public Comments and EPA Responses**

Our November 25, 2013 proposed rule provided a 30-day comment period and an opportunity to request a public hearing. During this period, we received no comments on our proposed action and no request for a public hearing.

## **III. Final Action**

Under section 110(k) of the CAA, EPA is taking final action to disapprove the CNMI SIP with respect to PSD, and incorporate by reference the Federal PSD regulations into the applicable CNMI plan.<sup>2</sup> EPA is also taking final action to grant a petition by CNMI for an exemption of the PSD major source baseline date, and to establish an alternate date, January 13, 1997, as the major source baseline date and trigger date for sulfur dioxide, PM<sub>10</sub>, and nitrogen dioxide in CNMI. Lastly, in addition to making conforming amendments to 40 CFR part 52, subparts A and FFF and to 40 CFR part 69, subpart C, EPA is also making certain corrections to certain errors in 40 CFR part 52 that were made in previous rulemakings involving the CNMI SIP.

This action establishes EPA's PSD regulations as a basic element of the applicable CNMI plan, and, through the exemption, establishes a major source baseline date and trigger date for

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<sup>2</sup> While EPA is taking final action to disapprove the CNMI SIP with respect to PSD, such disapproval does not affect the validity of previously approved rules in the CNMI SIP. Such SIP rules continue to be part of the applicable CNMI plan unless and until EPA approves their revocation or revision.

sulfur dioxide, PM<sub>10</sub>, and nitrogen dioxide on CNMI of January 13, 1997.

#### **IV. Statutory and Executive Order Reviews**

##### *A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review by the Office of Management and Budget (OMB) under EO 12866 and EO 13563 (76 FR 3821, January 21, 2011).

##### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b).

##### *C. Regulatory Reduction Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because, while the disapproval of the CNMI SIP with respect to PSD will lead to the application of the Federal PSD regulations to CNMI, the basic PSD statutory requirements for major emitting facilities to obtain a PSD permit already apply within CNMI, and the incremental impact associated with application of the specific requirements under the Federal PSD regulations will be offset by EPA's grant of CNMI's petition for an exemption from the original PSD major source baseline dates. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for

informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval of the CNMI SIP with respect to PSD, considered together with the incorporation of the Federal PSD regulations, and grant of an exemption request with respect to the PSD major source baseline date, does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. While the disapproval of the CNMI SIP with respect to PSD will lead to the application of the Federal PSD regulations to CNMI, the basic PSD statutory requirements for major emitting facilities to obtain a PSD permit already apply within CNMI, and the incremental impact associated with application of the specific requirements under the Federal PSD regulations will be offset by EPA's grant of CNMI's petition for an exemption from the original PSD major source baseline dates. Accordingly, the additional costs to State, local, or tribal governments, or to the private sector, will not be significant for the purposes of section 202 of the Unfunded Mandates Act.

*E. Executive Order 13132, Federalism*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (*Federalism*) and 12875

(Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities

among the various levels of government, as specified in Executive Order 13132, because it merely disapproves the CNMI SIP with respect to PSD, incorporates the Federal PSD regulations, and grants an exemption request with respect to the PSD major source baseline date, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*F. Executive Order 13175, Coordination with Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it disapproves the CNMI SIP with respect to PSD, incorporates the Federal PSD regulations, and grants an exemption request with respect to the PSD major source baseline date.

*H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and

applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

This rulemaking includes a review of the CNMI SIP relative to PSD requirements, incorporation of EPA's PSD regulation into the applicable CNMI plan, and a grant of an exemption to CNMI to the original PSD major source baseline dates. With respect to EPA's review of the CNMI SIP, EPA's role is to approve or

disapprove state choices, based on the criteria of the Clean Air Act, and incorporation of EPA's PSD regulation is the established remedy for disapproval of the CNMI SIP with respect to PSD. Thus, the EPA lacks the discretionary authority to address environmental justice in those two aspects of this rulemaking.

EPA does have discretionary authority to address environment justice with respect to EPA's consideration of the exemption request from CNMI and has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This is because, due to the lack of documentation of major source emissions changes from the original PSD baseline dates, application of the original major source baseline dates could lead to speculative and uncertain estimates of PSD increment consumption and correspondingly speculative and uncertain levels of environmental protection. In contrast, EPA's grant of CNMI's exemption request sets the stage for consistent and uniform PSD increment tracking and protection within CNMI.

#### *K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

**List of Subjects**

**40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Reporting and recordkeeping requirements.

**40 CFR Part 69**

Environmental protection, Air pollution control.

Dated: April 8, 2014.

Gina McCarthy,  
Administrator.

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart A – General Provisions**

**§ 52.02 [Amended]**

2. Section 52.02 is amended by:

- a. Adding “and FFF” after “DDD” in paragraph (d) introductory text; and
- b. Adding “Commonwealth of the Northern Mariana Islands,” after “American Samoa,” in paragraph (d)(2)(ix).

**§ 52.16 [Amended]**

3. Amend § 52.16 in paragraph (b)(9) by adding “Commonwealth of the Northern Mariana Islands,” after “American Samoa,”.

**§ 52.21 [Amended]**

4. Amend § 52.21 in paragraph (a)(1) by adding “and FFF” after “DDD” two times.

**Subpart FFF – Commonwealth of the Northern Mariana Islands**

**§ 52.2920 [Amended]**

5. In § 52.2920, amend the table in paragraph (c), by removing the entry for “Part VIII,” and under “Part VIII,” by removing

the entries for "Paragraph A," "Paragraph B," "Paragraph C," "Paragraph D," "Paragraph E," "Paragraph F," "Table VIII-1," "Paragraph G," and "Paragraph H."

**§ 52.2921 [Amended]**

6. Amend § 52.2921 in paragraph (c)(1)(i)(A) by removing "of lead" after "major sources".

7. Section 52.2922 is added to read as follows:

**§52.2922 Significant deterioration of air quality.**

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met, since the plan does not include approvable procedures for preventing the significant deterioration of air quality.

(b) Regulations for preventing significant deterioration of air quality. The provisions of § 52.21 except paragraphs (a)(1), (b)(14)(i)(a) and (b), (b)(14)(ii)(a) and (b), (i)(5)(i)(c), and (k)(2) are hereby incorporated and made a part of the applicable plan for the Commonwealth of the Northern Mariana Islands.

(c) For the purposes of applying the requirements of §52.21 within the Commonwealth of the Northern Mariana Islands, the terms "major source baseline date" and "trigger date" mean January 13, 1997 in the case of sulfur dioxide, PM<sub>10</sub>, and nitrogen dioxide.

**PART 69 – SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT**

8. The authority citation for part 69 continues to read as follows:

**Authority:** 42 U.S.C. 7545(c), (g) and (i), and 7625-1.

**Subpart C – Commonwealth of the Northern Mariana Islands**

9. Section 69.31 is added to read as follows:

**§ 69.31 New Exemptions.**

(a) Change to Major Source Baseline Date and Trigger Date.

Pursuant to section 325(a) of the Clean Air Act and a petition submitted by the Governor of the Commonwealth of the Northern Mariana Islands, EPA grants an exemption to the major source baseline dates and trigger dates for sulfur dioxide, PM<sub>10</sub>, and nitrogen dioxide under 40 CFR 52.21, and establishes January 13, 1997 as the major source baseline date and trigger date for these pollutants in the Commonwealth of the Northern Mariana Islands. This exemption applies solely to the PSD major source baseline date and trigger date in the Commonwealth of the Northern Mariana Islands. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered by, implemented or calculated from the PSD major source baseline

date, such requirement, increment, or calculation shall, for sources located within the Commonwealth of the Northern Mariana Islands, use January 13, 1997 as the PSD major source baseline date and trigger date for sulfur dioxide,  $PM_{10}$ , and nitrogen dioxide.

(b) [Reserved]

[FR Doc. 2014-08611 Filed 04/18/2014 at 8:45 am; Publication Date: 04/21/2014]